

Editor's Note

As Editor, may I welcome you to the first Edition of World Competition 2008, which is full of excellent contributions.

I take this opportunity to remind you that, given the full success of our *Young Writer's Award* for the two previous years, the 3rd Edition will be running in 2008. Young writers who meet the criteria laid down by the Journal are invited to submit their applications for this 3rd edition. The official announcement of the winner of the 2nd *World Competition Young Writer's Award* will take place in our June issue.

The March 2008 journal begins with an enlightening article from Pietro Manzini, who sets out to verify, on the basis of the classical economic analysis of the optimal sanctions, whether, and to what extent, the *2006 Fining Guidelines* allow the European Commission to impose sanctions that effectively persuade companies from getting involved in anticompetitive practices. Throughout this interesting lane, the reader will discover that the new Guidelines are more economically oriented and establish a framework in which the fine also reflects the personal and psychological profile of the offenders.

The second submission is by Alberto Heimler and Sean F. Ennis, who deal with the current initiative to create a Single Euro Payment Area (SEPA) by 2010. In an in-depth economic analysis, the authors reflect on the excellent opportunity SEPA would provide to eliminate card network rules that unduly restrict competition. Criticism takes place too about the substantial risk that it may promote payment systems with higher costs for the users. The article concludes with specific recommendations that the authors believe will ensure success for SEPA.

The next outstanding contribution, from Koen T'Syen, introduces us to “the bidding market defence”, which is a common place in the competition arena. Undertakings claim to operate in a bidding market, where is impossible to have market power. The author questions this defence unless four conditions are met and non-compliance with at least one of them, invalidates the defence. This article has been shortlisted for the 3rd *Young Writer's Competition Award*.

The issue of “essential facilities” doctrine is dealt with by Ashwin van Rooijen. This most brilliant contribution examines the relevant case law on refusals to deal in Europe and the United States. The foregoing leads the author to the revealing conclusion that in a lot of these cases, anticompetitive problems originate primarily from the nature of source of the facility and its underlying investments, fact that courts often let fall into oblivion. The author eventually advocates for a more prominent consideration by courts of the underlying investments in refusals-to-deal cases in order

to reduce the chilling effect on incentives to invest. This article has been shortlisted for the 3rd *Young Writer's Competition Award*.

The next article is also of high relevance. Ginevra Bruzzone and Marco Boccaccio provide us with a very interesting insight on the modernisation of private enforcement of Articles 81 and 82 of the EC Treaty brought by Regulation 1/2003. The authors address the subject taking Italy as a point of reference and embark us on a deep reflection about the weaknesses detected in the system after its start-up, providing illuminating recommendations in order to achieve greater effectiveness.

A bridge between Europe and the US is built by P. Sean Morris. This author, in a first approach, discusses the interaction of competition and intellectual property law in the European Union. Later on he focuses on the provisions of the Technology Transfer Block Exemption Regulation (TTBER) regarding grant back and no challenge clauses. The second pillar consists on the deep and enlightening analysis of the *MedImmune v. Genentech* case of the U.S. Supreme Court to determine whether this case should be taken into account by the EU in order to reformulate the TTBER provisions regarding no challenge clauses. A door remains open regarding unanswered questions that will have to be resolved in the future. This article has been shortlisted for the 3rd *Young Writer's Competition Award*.

Finally, we conclude with an article that leads us to South America. Francisco Marcos deals with the possibility of downloading the Competition Law of the Andean Community (CAN) to implement it in Bolivia and Ecuador as a transitory solution until proper national competition rules are adopted in these two countries. The author thoroughly balances the advantages and disadvantages of this hypothetical situation. Mr Marcos concludes suggesting that this implementation could become the strong roots to let a solid competition policy grow up in Bolivia and Ecuador.

I wish you all pleasant reading.

José Rivas
Editor
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